IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 13TH APRIL 2007 / 23RD CHAITHRA 1929

Crl.MC.No. 878 of 2007()

CC.1600/2003 of JUDL.MAGISTRATE OF FIRST CLASS-I, ALUVA

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PETITIONER: ACCUSED NO.7

SHELWIN KURIAKOSE, S/O. KURIAKOSE,
AMBATTIL HOUSE, EDAKKATTUVAYAL P.O.,
ERNAKULAM.

BY ADV. SRI.MANOJ P.KUNJACHAN

RESPONDENTS: COMPLAINANT & STATE

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1. T.C.VARGHESE,
THELAPPILLIL HOUSE, MEKKADU P.O.,
ERNAKULAM P.O., ERNAKULAM DISTRICT.

2. STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R1 BY ADV. SRI.MATHEW PAUL
R2 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 13/04/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 878 of 2007

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Dated this the 13th day of April, 2007

O R D E R

The petitioner is the 7th accused in a prosecution under Section 138 of the N.I. Act. The first accused is a Partnership firm and Accused 2 to 7 are allegedly its partners. A cheque on an account maintained by the first accused partnership firm, to which the petitioner/A7 is admittedly not a signatory, was dishonoured and consequently proceedings have been initiated under Section 138 of the N.I. Act.

2. The short contention of the petitioner is that sufficient averments to satisfy the dictum in **S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla** (2005 (4) KLT 209(SC) are not there to attract culpability of the petitioner and to justify issue of process against the petitioner. It is submitted that as against some co-accused the prosecution has already been quashed on the same ground.

3. The learned counsel for the respondent submits that the averments in the complaint read as a whole is sufficient to convey that the petitioner/A7 is in charge of and responsible to the first

accused firm for the conduct of its affairs. I have been taken through the complaint in detail. Except the averment in the first line of the complaint that the first accused is a partnership firm and accused 2 to 7 are its partners I find no specific averment to indicate in any way the complicity of the petitioner. The conclusion in these circumstances is inescapable that the petitioner is entitled to quashing of proceedings invoking the dictum in **S.M.S. Pharmaceuticals Ltd. (**supra).

4. This Crl.M.C. is accordingly allowed. The proceedings in C.C. 1600 of 2003 pending before the J.F.C.M. Court -I, Aluva in so far as it relates to the petitioner/A7 is quashed.

(R. BASANT)
Judge

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